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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Supplementary reports of States parties due in 1992

Addendum

PANAMA*

[21 September 1992]

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* The initial report submitted by the Government of Panama is contained in document CAT/C/5/Add.24; for its consideration by the Committee, see documents CAT/C/SR.75 and 76 and the Official Records of the General Assembly, forty-sixth session, Supplement No. 46 (A/46/46), paras. 209-236.

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* These documents can be consulted, in the Spanish version received from the Government of Panama, in the United Nations Centre for Human Rights.

I. INFORMATION ON THE ARTICLES OF PART I OF THE CONVENTION

Article 1

1. For a jurisdictional decision to be taken regarding an offence against individual freedom in connection with a public servant who has subjected a detainee to torture, it is necessary to use as a basis the definition of the concept adopted by the text of the Convention, since this constitutes the law of the Republic, having been duly ratified by the Legislative Assembly by means of Act No. 5 of 1987. Article 310, second paragraph, of the Penal Code requires that a penalty of 10 to 15 years' imprisonment be applied to any person who commits acts violating human rights that are recognized in conventions to which Panama is a party.

2. A similar, though not identical, form of words has been adopted by article 2 of the Inter-American Convention to Prevent and Punish Torture, signed at Cartagena de Indias, Colombia, on 9 December 1985, at the Fifteenth Regular Session of the General Assembly of the Organization of American States, which was approved by Panama by means of Act No. 12 of 1991.

3. We should point out that the definition of torture in the Convention must be taken into account when applying the ban on release from custody contained in article 2181 (5) of the Judicial Code, whereby offences against individual freedom, accompanied by torture, degrading punishment or harassment, are excluded from the right of release from custody.

Article 2

4. Article 21 of the Constitution of the Republic prohibits the deprivation of liberty except on such grounds and in accordance with such procedures as have previously been defined by law, and by virtue of a written warrant issued by the competent authority. What is more, a person may not be detained for more than 24 hours without being placed at the disposal of the competent authority. This implicitly involves a ban on submitting an arrested person to harassment, torture or any act of cruelty, either in the course of arrest or during pre-trial detention. The said constitutional text provides for the penalty of dismissal of public servants. It also warns of the possibility of an offender being sentenced to a penalty if convicted in a criminal court.

5. In similar vein, article 22 of the Constitution of the Republic of Panama requires that a detained person be informed, in an intelligible way commensurate with his level of education and culture, of the reasons for his detention and of his corresponding constitutional and legal rights.

6. Persons accused of having committed an offence are entitled to a presumption of innocence until proved guilty at a public trial, with all the guarantees established for their defence, and must be assisted by a lawyer during the police inquiries and judicial proceedings. In furtherance of that principle, article 2043 of the Judicial Code provides, as a right of the accused, for the appointment of defence counsel from the moment of his arrest or summons to make a statement, and this is important because the lawyer in that procedural act, or in any other, becomes a guardian of the rights of the accused and prevents him from being subjected to serious pain or suffering,

whether physical or mental, to obtain information or a confession, to confuse him in his evidence or to subject him to any kind of physical or moral pressure. In addition, counsel has the opportunity to criticize a question or an action.

7. Articles 2113-2116 of the Judicial Code require that the accused be informed of his right to appoint defence counsel and to remain silent if he has no counsel. Once this requirement has been met, or the accused has renounced his right to appoint defence counsel for the moment and agreed that the proceedings can continue, the examining official must explain to him in detail the alleged act, as well as the factual or circumstantial evidence against him and the sources thereof, unless this would prejudice the examination. Moreover, when taking the accused person's statement and officially informing him that he has been charged, the examining official must issue a judicial document of the examination, which can be challenged by means of an interlocutory action or an appeal to the protection of constitutional guarantees.

8. In order to deprive a person of his liberty, the examining official or the competent court must issue a judicial document or a reasoned decision explaining the offence charged, whether its existence has been substantiated by the standard forms of evidence, and the factual or circumstantial evidence that link the accused objectively or subjectively with the punishable act. If his pre-trial detention is effected without the performance of such formalities, it becomes absolutely null and void under article 2159 of the Judicial Code.

9. To avoid overcrowding and the possible inhuman treatment it might entail, Act 3 of 1991 introduced substitutes for pre-trial detention into Book Three, Chapter VI, Title II, Section 1(a) (Personal Precautionary Measures) of the Judicial Code. These provisions are developed in articles 2147-A to 2161 of the aforesaid legal text, which require some explanations. The personal liberty of the accused may be limited only through the application, by the judge or examining official, of the precautionary measures provided for in the legal rules in force, which may not be applied unless there are serious indications of the responsibility of the accused, or if there are grounds for justification, exempting from punishability, or grounds for extinguishing the offence or the penalty that could be imposed for it (art. 2147-A of the Judicial Code).

10. The personal precautionary measures are the following:

(a) A ban on the accused's departure from the territory of the Republic without judicial authorization;

(b) The obligation to appear periodically before a public authority;

(c) The obligation to reside in a specified place within the corresponding jurisdiction;

(d) The obligation to remain confined in his house, apartment or health establishment, as appropriate; and

(e) Pre-trial detention.

Decisions regarding personal precautionary measures are appealable only with deferred effect (art. 2147-B of the Judicial Code). Such personal precautionary measures are to be applied at the discretion of the judge, who must bear in mind the principle of healthy criticism when interpreting the evidence and other components of the proceedings. He must also have regard for the urgent requirements of the investigations, in connection with concrete situations that could endanger the acquisition or the authenticity of the evidence; must consider whether the accused has attempted to flee or whether there is an obvious danger that he may endeavour to do so (if the offence carries a minimum penalty of two years' imprisonment); and must assess whether, given the special circumstances or the personality of the accused, there is a real danger that he might commit serious offences using weapons or other means of personal violence.

11. When assessing the effectiveness of each of the measures, the judge should bear in mind the nature and degree of their requirements, which must be proportionate to the nature of the act and the possible penalty that may be imposed on the accused. Pre-trial detention in a prison establishment may be ordered only if all the other precautionary measures are deemed inadequate.

12. In the case of an accused woman who is pregnant or nursing her own child, or of an accused who is seriously ill or is over 65 years of age, pre-trial detention may be ordered only if there are precautionary requirements of exceptional significance. Nor must pre-trial detention be ordered - except where there are exceptional precautionary requirements - if the accused is dependent on drugs or alcohol and is undergoing a therapeutic rehabilitation programme in a legally authorized health institution and interruption of the programme could prejudice his addiction cure. Such circumstances must be verified by the judge or the examining official.

13. If a precautionary measure is contravened, another more serious one may be imposed, according to the nature, motives and circumstances of the offence. The judge or examining official is entitled to order the accused to appear before a given authority within his jurisdiction, specifying the days and times of such appearance, with due regard for the accused's occupation and place of residence, adopting in every case the verification provisions needed to ensure the effectiveness of the measure. The judge or examining official may likewise order the accused to reside in a specified place within his jurisdiction. If the accused is unable to provide for his own economic needs or those of his family, or if he is in a situation of absolute poverty, the judge or examining official may authorize him to absent himself during the working day for the time needed to satisfy that requirement.

14. Article 34 of the Constitution does not exempt a person from liability for a manifest violation of a constitutional or legal precept to the detriment of another person on the grounds that he acted under orders from a superior. It excepts, however, members of the police force on duty, in which case responsibility falls solely on the hierarchical superior who gave the order.

15. Article 75 of the Penal Code requires that if the person who must serve a sentence is in grave danger of an early death by reason of illness, the execution of the sentence must be deferred until the danger has passed. In the case of a pregnant woman or one who has recently given birth, execution of the sentence must be deferred until the infant is six months' old.

16. According to article 76 of the Penal Code, if a convicted person is suffering from mental illness before beginning to serve his prison sentence or contracts such illness after having begun to do so, the court shall suspend the performance of the sentence and order him to be transferred to a psychiatric hospital or other suitable establishment. Once, however, the convicted person has been certified cured by the qualified doctors, he shall be transferred once again to the corresponding prison establishment to serve the rest of his sentence, unless this has come under the statute of limitations.

17. Article 11 of Act 19 of 1991 has, as an innovation, added paragraph 15 to article 98 of the Judicial Code referring to the powers of the Third Administrative Litigation Division of the Supreme Court of Justice. It covers a process for the protection of human rights whereby the Division is empowered to nullify administrative acts by national authorities and, if appropriate, to re-establish and make good the violated right, if, by the said administrative acts, justiciable human rights provided for in the laws of the Republic have been violated. These include the rights enshrined in international human rights conventions. It is not required that the injured person should have previously exhausted administrative remedies. What is more, the Division's judgements are final, definitive and mandatory and there is no appeal from them.

Article 3

18. The provisions contained in this article of the Convention, in respect of the extradition of persons applied for by foreign authorities, are addressed in the Judicial Code in Book Three, Chapter V, Section 2 (a), Title IX (Special Proceedings) and in articles 2504-2519. For extradition to proceed, these provisions require the criminal acts for which the person applied for has been tried, convicted or prosecuted to have been carried out within the jurisdiction of the resident State and to carry a custodial penalty both in the legislation of that State and in that of the Republic of Panama.

19. The formalities require that the application be submitted to the Ministry of Foreign Affairs through the appropriate diplomatic channels or, if these do not exist, through the consular authorities or those of a friendly nation, together with the following documents:

(a) When the accused person has been convicted, a copy of the executory judgement and the evidence on which it is based, if that evidence is not contained in the judgement;

(b) In the case of an accused person, a copy of the committal order or the pre-trial detention order, as well as the evidence on which such a decision is based;

(c) A detailed report on the criminal acts alleged, when the documents mentioned in the preceding paragraph are not available;

(d) The text of the applicable legal provisions, as well as those referring to the prescription of the criminal act and the punishment; and

(e) The personal data enabling the person to be identified.

20. When the formal application for extradition has been received, the Minister for Foreign Affairs will study the documentation submitted. However, if a document has been omitted or some formality has not be complied with, a reasonable period of time will be granted to the requesting State in order to remedy the shortcomings noted. If the person concerned has been detained following representations by the requesting State, the latter will be informed that the person in question will be released 60 days after the start of the period of detention if the application for extradition has not been duly finalized by that time.

21. Extradition will not be granted in the following cases:

(a) When the subject of the application is Panamanian by birth or was naturalized Panamanian before the commission of the act on which the application for extradition is based;

(b) When Panamanian courts are competent to try the person whose extradition is requested for the offence on which the application is based;

(c) When, in the view of the Ministry of Foreign Affairs, the person sought may be tried in the requesting State for an offence other than the one that gave rise to the application for extradition or by a court of special jurisdiction;

(d) When the application had been rejected on an earlier occasion for the same offence, for the same reasons and in respect of the same person;

(e) When the person sought has served the appropriate sentence or has been pardoned or amnestied for the offence that gave rise to the application for extradition in the requesting State or in the Republic of Panama;

(f) In the event of prescription of the criminal act or the punishment inflicted on the person sought in the legislation of the requesting State or in that of the Republic of Panama, prior to the application for extradition;

(g) In the case of persons who, in the opinion of the Ministry of Foreign Affairs, are being persecuted for political offences or whose extradition is requested for predominantly political motives. The abduction, murder or assassination of a Head of State or any person exercising public authority at the time of the act will not be considered a political offence;

(h) When the offence carries the death penalty in the requesting State, unless the latter formally undertakes to apply a less severe penalty to the person sought;

(i) When the person sought is being tried or is serving a sentence in the Republic of Panama, his surrender to the requesting State, if extradition is granted, will be postponed until the criminal proceedings have been concluded, the case has been dismissed or the sentence has been served;

(j) When the person has been tried in the Republic of Panama for the same offence on which the application for extradition is based; and

(k) When the executive branch so decides, stating its reasons.

22. When extradition is refused on the grounds stated in (a), (b), (c) and (d) of the preceding paragraph, the person sought will be tried in the Republic of Panama as if the offence with which he is charged had been committed on Panamanian territory.

23. When the application for extradition has been deemed admissible as to form, the decision on the merits will be taken by means of a ruling notified to the person; if he does not contest it, he will be placed at the disposal of the requesting State forthwith.

24. In order to contest a ruling approving an application for extradition, the person in question may bring a motion challenging the decision before the Criminal Division of the Supreme Court of Justice within a period of 15 working days, calculated from the date of notification of the respective opinion; the motion will be taken up in a hearing by the Office of the Attorney-General. The following constitute grounds for objection:

(a) The person is not the one whose extradition is requested;

(b) Defects of form in the documents submitted;

(c) Invalidity of the application for extradition on the ground that the law of the requesting State is not well-founded; and

(d) The application for extradition is contrary to the provisions of the law of a treaty to which the Republic of Panama is a party.

25. When the motion has been introduced, within the following three working days, the Second Division of the Supreme Court of Justice, will decide whether or not it is appropriate to grant the extradition request, communicating its decision to the Ministry of Foreign Affairs and to the person in question. When the Second Division of the Supreme Court of Justice considers the objection to be well-founded, it will revoke the ruling of the Ministry of Foreign Affairs and will order the immediate release of the person in question if he is being held in detention. If, in the opinion of the Second Division of the Supreme Court of Justice, extradition is appropriate, the executive branch may or may not grant it, as it deems fit.

26. Naturally, when extradition is granted, the requesting State has a period of 30 days in which to take charge of the person. This period is calculated from the date on which the person has been placed at its disposal. However, when it does not take charge of the person within that period, he will be released if he is being kept in pre-trial detention. He must be handed over

to the agents of the requesting State at the place intended for that purpose or a place decided by the executive branch, unless decided otherwise by the requesting State and the Republic of Panama. Any items related to the offence and its perpetrators must also be handed over, although the rights of third persons over them are maintained. Any costs involved in the extradition will be payable by the requesting State.

27. In order to guarantee respect for due process and human rights, anyone detained under an application for extradition is allowed bail until the question of the application for extradition has been finally settled. The provisions of Panamanian criminal procedure will be taken into account in agreeing to and setting bail. Extradited persons handed over by other States to a friendly third nation may pass through the territory of the Republic of Panama with the permission of the executive branch. Those escorting the persons being extradited should request protection to avoid escapes.

Article 4

28. Article 28 of the Constitution of the Republic of Panama prohibits the application of measures that impair the physical, mental or moral integrity of detainees in the prison system and requires inmates to be trained in occupations that enable them to be reintegrated as useful members of society.

29. When explaining the implementation of article 1 of the Convention, we referred to a series of procedural guarantees laid down both by the Constitution and by the rules of criminal procedure in order to avoid physical or moral pressure being exerted upon anyone facing criminal proceedings. From this starting-point, articles 160 and 310 of the Penal Code qualify as an offence any act carried out by a public servant that subjects a detainee to hardship or ill-treatment, torture, degrading punishment, harassment, arbitrary measures or acts violating human rights that are recognized in agreements to which Panama is a party. The penalties range from 6 months to 15 years, depending on the nature of the offence committed and the category of crime involved.

30. Other acts violating human rights which might include an element of torture, involving abuse of authority and infringement of the duties of public servants, are also qualified in Book Two, Chapter IV, Title X, articles 336-342, of the Penal Code. Moreover, offences against individual liberty involving the unlawful deprivation of liberty or abuse of authority or infringements of legal formalities perpetrated by public servants are qualified as an offence in Book Two, Chapter III, Title II, articles 151-160, of the Penal Code. In addition, human activities contrary to political freedom, freedom of worship, assembly, enterprise, the inviolability of the home, etc., are typified as in other legislations as an offence. Finally, we would repeat what was said earlier to the effect that article 2181 (5) of the Judicial Code does not permit bail to be granted to persons accused of offences against individual freedom, accompanied by torture, degrading punishment or harassment.

Article 5

31. The provisions of this article of the Convention are given concrete application by Panamanian criminal legislation on the basis of the principle of territoriality whereby criminal law will apply to punishable acts committed on the national territory and other places subject to the jurisdiction of the State, apart from the exceptions established in the conventions and rules accepted by the Republic of Panama. The territory of the Republic comprises the continental and insular area, the territorial sea, the continental shelf, the subsoil and the airspace over them, Panamanian ships or aircraft and everything that complies with this concept, in accordance with the rules of international law. (This is the definition given in article 7 of the Panamanian Penal Code.)

32. In accordance with article 9 of the Panamanian Penal Code, Panamanian criminal law will be applied to punishable acts committed abroad in any of the following situations:

(a) When they produce or should produce results in all or in part of Panamanian territory;

(b) When they are perpetrated against any Panamanian or his rights;

(c) When they are committed by public servants or agents abusing their authority or violating the duties of their post or mandate;

(d) When they are committed abroad by persons in the service of the Panamanian State and have not been tried in the place of their commission by reason of diplomatic or functional immunity; and

(e) In the case of offences committed by Panamanians abroad whose extradition is requested by another State in order to try the case and extradition has been refused on the grounds of nationality.

33. In addition to the above text, articles 10 and 12 of the Panamanian Penal Code also determine the application of Panamanian criminal law to persons who commit punishable acts envisaged in the international treaties ratified by the Republic of Panama. When an accused person is on the territory of the Republic and independently of the provisions in force in the place where the punishable act was committed and of the nationality of the accused, judgements in criminal proceedings delivered in respect of the offences referred to and described in the previous paragraph, including those referred to in the Convention, will not have the force of res judicata under national law.

Article 6

34. The text of article 6 covers two eventualities or hypotheses: the first refers to persons sought by another State for the commission of offences amounting to acts of torture and who are actually on the territory within Panamanian jurisdiction; the second refers to a Panamanian who has committed an act of torture abroad or on Panamanian territory. Both hypotheses are dealt with under Panamanian legislation, as mentioned in the section concerning article 5 of the Convention (paras. 31-33). There it was explained

concerning article 5 of the Convention (paras. 31-33). There it was explained that articles 7, 9, 10 and 12 of Panama's Penal Code provide for the prosecution of offences committed by any person on Panamanian territory, including aircraft or ships registered in Panama. There is also a reference to the second hypothesis to the effect that sentences delivered as a result of criminal proceedings brought against Panamanians who commit crimes abroad will not have the force of res judicata under national law.

35. When a national belonging to another State enters Panamanian territory and the authorities are apprised of the situation, the Attorney-General's Office may institute inquiries, arrest the individual and contact the other State with a view to applying for his extradition, so long as it is in keeping with the indications given in the section on article 3 of the Convention (paras. 18-27). The detainee is given every opportunity to communicate with the representative of the State of which he is a national or in which he usually resides. He is also informed of the grounds for his arrest and is entitled to appoint counsel for the defence and avail himself of all appropriate legal remedies.

Article 7

36. In accordance with article 2509 of the Judicial Code, if the application for extradition is rejected when the person sought is Panamanian by birth or was naturalized Panamanian before the commission of the act on which the request for his extradition is based; when the Panamanian courts are competent to try him for the offence on which the application is based; when, in the view of the Ministry of Foreign Affairs, the person might be tried in the requesting State for an offence other than the one that gave rise to the application for extradition, or by a court of special jurisdiction; or when extradition has been refused on an earlier occasion for the same offence, on the same grounds and in respect of the same person; then the person in question will be tried in the Republic of Panama as if the offence with which he is charged had been committed on Panamanian territory.

37. In such circumstances, the person concerned must be guaranteed due process at all stages of the proceedings, being entitled to communicate with his country's diplomatic representative, to appoint a defence lawyer and, when he does not have sufficient financial means, to have the court appoint counsel on his behalf, to be informed of the charges against him, to be provided with a copy of the pre-trial detention order and to be able to avail himself of all judicial remedies. These matters, relating to guarantees of due process, are mentioned in the explanations given in connection with article 2 of the Convention (paras. 4-17).

Article 8

38. All the provisions of article 8 are observed by Panama. The crime of torture is recognized as a punishable act under Panamanian legislation; it is therefore considered as an offence for which the Republic of Panama can grant extradition. Article 2504 (2) of the Judicial Code considers as extraditable offences those classified as such under Panamanian criminal law. Reference is

made to the section of this report relating to article 3 of the Convention (paras. 18-27), which explains the formal and substantive requirements that need to be met in order for extradition to be granted.

Article 9

39. There are no rules prohibiting assistance in connection with criminal proceedings brought in respect of an offence under article 4 of the Convention. The Panamanian State therefore complies with the provisions of article 9 when requested to do so by another State.

Article 10

40. The Organizational Act relating to the criminal investigation service as a subsidiary organ of the Attorney-General's Office was approved by Act No. 16 of 1991, article 44 of which prohibits law enforcement officers from inflicting, instigating or condoning any act of torture and other cruel, inhuman or degrading treatment or punishment. The article also prohibits invoking orders from a superior or exceptional circumstances, such as a state or threat of war, a threat to national security, internal political unrest or any other public emergency as justification for torture or other cruel, inhuman or degrading treatment or punishment. Any officer of the criminal investigation service who fails to observe the aforementioned rule will not only be liable to disciplinary measures, but will also be subject to criminal proceedings to ascertain whether he has committed any offence against individual freedom or violation of human rights.

41. Article 2112 of the Judicial Code provides that statements will not be taken under oath. The statements of persons who committed or were involved in some way in the offence are not to be taken under oath or coercion. In any event, the accused is guaranteed that he will not be subjected to torture or pressure or be handcuffed; moreover, the guard must not interrupt or interfere when the accused is making his statement.

42. Guards are currently being selected for prison institutions and are being given training on respect for human rights. Approximately 300 prison officers will be appointed for the new La Joya prison as well as for other penitentiaries throughout the country.

43. Under articles 5, 12, 15, 16 and 18 of Executive Decree No. 168 of 15 June 1992, national police officers are required to refrain from torture or the use of lethal force when carrying out arrests, save in exceptional cases where the person's arrest is resisted or the police officer's life is endangered.

Article 11

44. As explained in preceding paragraphs articles 2112-2119 of the Judicial Code require that the accused should be guaranteed due process at all stages of the proceedings, including when making his statement, which should not be taken under oath or any kind of physical or moral pressure.

45. Article 28 of the Constitution of the Republic of Panama prohibits prison officers and supervisors from using methods which will impair the physical, mental or moral integrity of the detainees. Failure to observe that rule is considered as a specific offence under the Penal Code, namely in articles 160 and 310, second paragraph, concerning the conduct of public servants who subject detainees to hardship or ill-treatment, torture, degrading punishment, harassment, arbitrary measures or acts violating human rights that are recognized in agreements to which Panama is a party.

46. Articles 156 and 157 of the Penal Code also qualify as offences against individual freedom acts perpetrated by public servants who, abusing their authority or in breach of procedures laid down by the law, deprive persons of their liberty, or order or carry out searches of their clothing or person.

47. Article 2181 (5) of the Judicial Code rules out the possibility of release from custody for those charged with offences against individual freedom such as acts of torture, degrading punishment or harassment.

48. In our clarifications concerning article 10 of the Convention (paras. 40-43) we referred to the training seminar organized for prison guards on respect for human rights as well as the rules prohibiting police officers from using lethal force or torture.

Article 12

49. Acts of torture, hardship, ill-treatment, degrading punishment, harassment or arbitrary measures or acts violating human rights that are recognized in agreements to which Panama is a party may be prosecuted ex officio. The Attorney-General's Office must investigate them as soon as it is informed of their occurrence and does not require a complaint, report or charge to have been submitted by the victim, in accordance with articles 1975 and 1976 of the Judicial Code.

50. Furthermore, under Book Three, Title X, articles 2529-2544, of the Judicial Code, competent officials from the judiciary and the Attorney-General's Office are required to carry out monthly visits to prison institutions with a view to providing all inmates with detailed information on their legal status in the institution as well as to listen to their complaints on treatment, assistance, food, and conduct of prison warders and officers, private or State-appointed defence counsel or prosecuting authorities. Should an act of torture come to the attention of the competent authority, it will initiate appropriate inquiries forthwith.

51. The Correction Department, at the Ministry of the Interior and Justice, is also responsible for supervising all aspects of the prison institutions. It must liaise with the wardens of the institutions in order to ensure that the standard minimum rules for the treatment of prisoners are met, in respect of their food, classification, paid labour, contact with the outside world, family and lawyers, diplomatic assistance for nationals of other States and training of prison staff.

Article 13

52. Here we would repeat the clarifications given under article 12 which explained the procedure provided for investigations in the Panamanian State, which is available to any individual who has been subjected to torture in any territory within Panamanian jurisdiction. Under this procedure the person in question may submit a complaint or make a particular charge and be guaranteed a prompt and impartial decision, with steps taken to avoid reprisals against the complainant and witnesses.

53. It is worthwhile noting that the first part of the annexes contains court rulings on refusal to grant release as well as other decisions relating to trials which are conducted with the greatest impartiality and objectivity and provide the parties involved with the necessary procedural guarantees. Moreover, article 41 of the Constitution of the Republic of Panama upholds the right of every person respectfully to submit requests or complaints to public officials, either for private motives or in the public interest, and to obtain a prompt decision on their complaint or petition; it also sets a deadline of 30 days for the adjudication of the request, query or complaint.

Article 14

54. The questions raised in article 14 are dealt with in Book One, Title VI, articles 119-130 of the Penal Code: these provisions establish the civil liability of any person guilty of an offence. In a sentence handed down in criminal proceedings, the following may be ordered:

(a) Compensation for the material and moral damage caused to the victim, his family or a third party;

(b) Restitution of the property obtained as a result of the offence or, failing this, the value of the property.

55. In cases of non-attributability (involving persons of unsound mind), the civil liability of a legally incompetent person continues to exist provided that his maintenance and expenses resulting from detention are ensured. Consequently, the parents, guardians, curators or persons having custody of the legally incompetent person are liable on a subsidiary basis if they could have averted the injury or if they have neglected their custodial duties.

56. The civil liability deriving from the offence does not cease once the sentence has been served or when there are grounds for termination of the criminal action or the penalty. It is transmitted to the heirs of the person found guilty of the offence - up to the amount of the inheritance - provided they accept it with benefit of inventory. The right to receive restitution, redress or compensation is transmitted to the heirs of the victim.

Article 15

57. In accordance with article 2120 of the Judicial Code, any measure or promise, coercion or threat used in order to secure a statement from the accused is prohibited, as is any loaded or tendentious question. Any official who infringes this provision will be liable to the corresponding disciplinary

penalty and will also have to face criminal proceedings. Supplementing the foregoing, article 769 of the Judicial Code categorizes as invalid evidence, inter alia, a confession, a statement by a party to the proceedings or a statement by a witness if it has been obtained through torture or violation of human rights or is contrary to morality or public order.

58. We consider it appropriate to point out, also with regard to permitted evidence to demonstrate the punishable act, that article 2073 of the Judicial Code provides that evidence which is prohibited by law, which constitutes a breach of human rights or which is contrary to morality or public order is not permitted.

Article 16

59. Ever since the initial explanation in connection with article 1 of the Convention (paras. 1-3), we have made it clear that Panama has incorporated within its criminal legislation the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Penal Code (Book Two, Chapter III, Title II, arts. 151-160) provides for offences against individual liberty. Articles 156-160 cover offences by public servants who, abusing their authority or in breach of the procedures laid down by law, deprive another person of freedom or order or carry out improper searches of the clothing or body of another person. They also relate to prison officers who admit a person to prison without a written order by the competent authority or who refuse to obey an order to release a prisoner issued by the same authority, and officers who subject a prisoner to brutality, ill-treatment, torture, degrading punishment, harassment or arbitrary measures. Article 310 (2) of the Penal Code establishes a penalty of 10 to 15 years' imprisonment for any person who perpetrates acts violating the human rights recognized in agreements acceded to by Panama; in addition, all such offences carry the penalty of disqualification from public office for a period to be determined at the discretion of the competent court.

60. The provisions of the Penal Code are implemented throughout the State of Panama and its courts. We append to this report a copy of the Penal Code, the Judicial Code and other legal instruments cited in the observations on each article.

II. FURTHER INFORMATION

61. The Panamanian prison system is based on the principles of security, rehabilitation and social defence. Consequently, measures which impair the physical, mental or moral integrity of detainees are forbidden and prisoners are being trained in occupations which will enable them to be reintegrated as useful members of society.

62. Work is currently being completed on the construction of a new prison, La Joya, in the district of Chepo (Province of Panama). It will be able to accommodate 1,000 prisoners and will have workshops, an education unit, a clinic and a recreation area, and be in conformity with the minimum rules for the treatment of prisoners. All existing Panamanian prisons are being

renovated and the second part of the annexes contains a table showing the improvements carried out in each prison and the corresponding financial investment (in dollars).

63. There are no political prisoners in the Republic of Panama. All persons held in prisons are subject to due process of law, under the responsibility of the courts and competent authorities. The prisons have interdisciplinary professional boards, comprising doctors, psychiatrists, social workers, legal advisers and psychologists, who are required to examine each prisoner in order to determine appropriate rehabilitation treatment and to provide medical and educational services.

64. Every month, judges, magistrates, public prosecutors and other competent officials visit prisons in order to inform prisoners of relevant developments and their legal status, and to hear any complaints they may have about their treatment in prison.

65. The Ex Officio or Public Defence Institute was established by Book One, Title XIV articles 406-430 of the Judicial Code to provide free legal assistance to all needy persons and to enable any defendant to be assisted by a lawyer from the time of his arrest.

66. The camps for persons detained in connection with the events of 20 December 1989 have now been disbanded. They were the result of a special situation at that time and prisoners are now distributed around the various national prisons.

67. An education programme consisting of the first cycle of secondary studies is currently under way at El Renacer prison in the interior of the country. Since the number of prisoners there is small, they are allowed to take evening classes in the local schools and to follow university courses.

68. A programme of remunerated work in prisons has been approved by agreement with the Ministry of Commerce and Industry. It comprises a system of micro-businesses and enables the prisoners to receive remuneration, which is divided up with a percentage to cover the prison's expenses, another percentage being paid into a savings account and a further percentage going to the relatives. The ongoing programmes comprise:

(a) Cabinet-making in the town of Penonomé (province of Coclé);

(b) Cabinet-making and welding at El Renacer prison in Panama City (province of Panama); and

(c) Dressmaking at the Women's Rehabilitation Centre.

III. ANNEXES*

69. We have divided this section into four parts. The first (213 pages) contains jurisprudence; in other words, we append 23 court decisions relating to the implementation of the Convention under consideration, as proof that what has been stated under each article is being done. In the second part (2 pages) we have included a table showing the building and improvement work being carried out at the various prisons, with all relevant details. The third part (40 pages) relates to the education and micro-business programmes, which are described in detail. We also append the legislation cited in order to enable the Committee to consider each statement and explanation in the light of the corresponding legal provisions. Lastly, we append the decisions setting forth the rights and obligations of the Panamanian prison population, together with the incentives for persons held in the prisons to undergo rehabilitation, to practise good behaviour and to comply with prison regulations.

The fourth part comprises the following enactments:

(a) 1972 Constitution of the Republic of Panama, including amendments, and Constitutional Act of 1983;

(b) Penal Code of the Republic of Panama, with laws derogating from, amending, adding to and supplementing it. It includes correctional penalties, the Bustamante Code, and a full analytical index and appendix;

(c) Judicial Code of the Republic of Panama. This contains Books One, Two, Three and Four, with a full appendix and analytical index. Also included are the regulations relating to the judiciary, roving judges, the Judicial Council, the Bustamante Code, the Criminal Investigation Service Organizational Act, etc.

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* These documents may be consulted, in the Spanish version received from the Government of Panama, in the files of the United Nations Centre for Human Rights.